

S/N 10/628,271

PATENT  
Confirmation No. 4721

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Sung-Tao LIN et al.	Examiner:	John Hanley
Serial No.:	10/628,271	Group Art Unit:	2856
Filed:	July 29, 2003	Docket No.:	21225-66335 (previously BHT-3111-349)
Title:	RING BODY AND SUPPORTING STRUCTURE OF VIBRATILE GYROSCOPE		

**RENEWED PETITION UNDER 37 CFR 1.137(b)**

Mail Stop: OFFICE OF PETITIONS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

July 21, 2008

**Customer No. 24728**

Dear Sir:

This is a Renewed Petition under 37 CFR 1.137(b) in response to the Decision on Petition mailed March 21, 2008.

**Background**

The application was filed in the U. S. Patent & Trademark Office (hereinafter, the "Office") on July 29, 2003 and a first non-final Office action was mailed to Bruce H. Troxell, of Troxell Law Office, at Suite 1404, 5205 Leesburg Pike, Falls Church, VA 22041, previous counsel of record for Applicant (hereinafter, "Troxell") on March 28, 2005. A response was submitted to the Office on July 11, 2005, with an appropriate request for extension of time. However, the response was considered non-compliant. Accordingly, a Notice regarding a non-compliant or non-responsive amendment was mailed to Troxell on September 9, 2005. As no

response to the Notice was received, the application became abandoned on October 10, 2005. A Notice of Abandonment was mailed to Troxell on December 16, 2005.

A Petition for Revival Under 37 CFR 1.137(b) (hereinafter, "Petition") was filed in the Office November 2, 2007 by Troxell, together with an Amendment in response to the Office Action dated March 28, 2005 and proper payment of fees.

A Decision on Petition from the Office was mailed to Troxell March 21, 2008 (hereinafter, the "Decision").

A Revocation of Power of Attorney with New Power of Attorney and Change of Address was submitted to the Office June 19, 2008, in which Assignee of Record of the Entire Interest revoked the Power of Attorney previously given to Troxell for the present application and appointed the practitioners associated with the Customer number 24728, which represents Morris, Manning & Martin, LLP, with a mailing address 3343 Peachtree Road, NE, 1600 Atlanta Financial Center, Atlanta, GA 30326, (hereinafter, "MMM") as new attorney on the record for the present application.

The undersigned, or Petitioner, is a partner of Morris, Manning & Martin, LLP and now represents applicants and the assignee of record of the entire interest (hereinafter, "Applicant") respectfully requests that for the facts and arguments set forth in this renewed petition, the application be revived and the application be restored to pending status.

### **Renewed Petition**

The Decision dismissed the Petition because it asserted that the Petition lacked "a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional". More specifically, the Decision indicated that "[t]here are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

- (1) the delay in reply that originally resulted in the abandonment;
- (2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2)."

In response, Applicant, through the undersigned respectfully submits that the Declaration of Chang (hereinafter, the "Declaration"), provided herewith as Exhibit A, demonstrates that

(1) Applicant had no intention to cause, and did not cause, the delay in reply that originally resulted in the abandonment;

(2) Applicant had no intention to cause, and did not cause, the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) Applicant had no intention to cause, and did not cause, the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

In particular, the Declaration states that Applicant was diligent to facilitate the prosecution of the instant application and has had no intention to delay the prosecution of the instant application as shown in Exhibits 1-7, attached to the Declaration.

Therefore, the evidence set forth in the Declaration is sufficient to support the statements of Applicant set forth below:

The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. More specifically, (1) the delay in reply that originally resulted in the abandonment was unintentional; (2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application was unintentional; and (3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application was unintentional.

Furthermore, the required reply to the Notice was filed previously and thus no need to be submitted again.

The required petition fee was also paid previously, and the fee in the amount of \$460.00 for two-month extension of time to request for reconsideration of the Decision is included herewith. No additional fees are believed due, but an authorization is hereby expressly given to the Office to charge any additional fees or credit overpayments to Deposit Account No. 50-3537.

Accordingly, Applicant respectfully submits that a grantable renewed petition under 37 CFR 1.137(b) is now presented and the reconsideration of the Decision and a favorable decision of the renewed petition is solicited.

### **REMARKS**

The facts presented in connection with the Declaration and related Exhibits provides “an adequate showing that the delay did not result from a deliberate course of action”. Applicant respectfully submits that this renewed petition should be granted in light of Lawman Armor v. Simon, 2005 U. S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich2005) (hereinafter, “Lawman”); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U. S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) (hereinafter, “Field”); and New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S. District LEXIS 50832, \*10 - \*12 (S.D.N.Y. 2007) (hereinafter, “NYU”).

In Lawman Armor v. Simon, 2005 U. S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich2005), which is cited by the Office in the Decision, the facts show “Simon ‘was unaware of the last office action or the abandonment of the patent application until approximately a year ago’.” In that case, Simon did not take any action to revive the case until approximately one year after Simon became aware of the abandoned status of the application. In contrast, Applicant made constant and numerous inquiries to Troxell to take actions to revive. Therefore, Lawman does not apply to the present application in light of the facts presented in connection with the Declaration and related Exhibits.

The Office also cited Field Hybrids, LLC v. Toyota Motor Corp., 2005 U. S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) to support dismissal of the original petition to revive. However, in Field, it was determined that the reason for the delay [in responding to the outstanding Office Action] was not a lack of awareness of the filing deadlines but the delay was caused by (Applicants) Field and Adler’s failure to pay their legal bills. Additionally, Field was put on notice that a response should be made quickly, but Field, in a letter, requested the attorney not to proceed any further with the application. In contrast, Applicant had no intention to cause and did not cause, the delay in reply that originally resulted in the abandonment and the delay in filing an

initial petition pursuant to 37 CFR 1.137(b) to revive the application. In particular, in the present application, all legal fees were timely paid (See Exhibit 7) and there were no instructions to Troxell to abandon the application. In contrast, the record shows Applicant's persistent inquiries of Troxell regarding the prosecution and status of the application. Accordingly, Field also does not apply to the present application in light of the facts presented in connection with the Declaration and related Exhibits

Further, the Office cited *New York University v. Autodesk*, 2007 U.S. DIST LEXIS, U.S. District LEXIS 50832, \*10 - \*12 (S.D.N.Y. 2007) as a precedent to dismiss the original petition to revive. In NYU, the Examiner of the application in question spoke with the attorney of record, who confirmed the application was abandoned. Again, in the instant application, Applicant took immediate action to get the application revived once Applicant discovered that it was abandoned, which shows Applicant's intention not to abandon. Therefore, NYU should not be used to deny this renewed petition.

### **CONCLUSION**

In view of the above, it is respectfully requested that the application be revived and the application be restored to pending status.

Consideration and grant of this renewed petition are earnestly requested.

Respectfully submitted,

MORRIS, MANNING & MARTIN, LLP

July 21, 2008



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